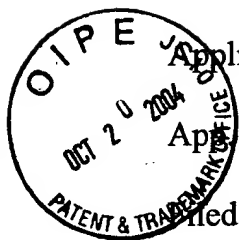


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Applicant : Ashkenazi et al.

App. No. : 09/903,925

Filed : July 11, 2001

For : SECRETED AND
TRANSMEMBRANE
POLYPEPTIDES AND NUCLEIC
ACIDS ENCODING THE SAME

Examiner : Hamud, Fozia M

Group Art Unit 1647

CERTIFICATE OF EXPRESS MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Commissioner of Patents, Washington D.C. 20231 on:

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DECLARATION OF AVI ASHKENAZI, Ph.D UNDER 37 C.F.R. § 1.132

I, Avi Ashkenazi, Ph.D. declare and say as follows: -

1. I am Director and Staff Scientist at the Molecular Oncology Department of Genentech, Inc., South San Francisco, CA 94080.

2. I joined Genentech in 1988 as a postdoctoral fellow. Since then, I have investigated a variety of cellular signal transduction mechanisms, including apoptosis, and have developed technologies to modulate such mechanisms as a means of therapeutic intervention in cancer and autoimmune disease. I am currently involved in the investigation of a series of secreted proteins over-expressed in tumors, with the aim to identify useful targets for the development of therapeutic antibodies for cancer treatment.

3. My scientific Curriculum Vitae, including my list of publications, is attached to and forms part of this Declaration (Exhibit A).

4. Gene amplification is a process in which chromosomes undergo changes to contain multiple copies of certain genes that normally exist as a single copy, and is an important factor in the pathophysiology of cancer. Amplification of certain genes (e.g., Myc or Her2/Neu)

gives cancer cells a growth or survival advantage relative to normal cells, and might also provide a mechanism of tumor cell resistance to chemotherapy or radiotherapy.

5. If gene amplification results in over-expression of the mRNA and the corresponding gene product, then it identifies that gene product as a promising target for cancer therapy, for example by the therapeutic antibody approach. Even in the absence of over-expression of the gene product, amplification of a cancer marker gene - as detected, for example, by the reverse transcriptase TaqMan[®] PCR or the fluorescence *in situ* hybridization (FISH) assays - is useful in the diagnosis or classification of cancer, or in predicting or monitoring the efficacy of cancer therapy. An increase in gene copy number can result not only from intrachromosomal changes but also from chromosomal aneuploidy. It is important to understand that detection of gene amplification can be used for cancer diagnosis even if the determination includes measurement of chromosomal aneuploidy. Indeed, as long as a significant difference relative to normal tissue is detected, it is irrelevant if the signal originates from an increase in the number of gene copies per chromosome and/or an abnormal number of chromosomes.

6. I understand that according to the Patent Office, absent data demonstrating that the increased copy number of a gene in certain types of cancer leads to increased expression of its product, gene amplification data are insufficient to provide substantial utility or well established utility for the gene product (the encoded polypeptide), or an antibody specifically binding the encoded polypeptide. However, even when amplification of a cancer marker gene does not result in significant over-expression of the corresponding gene product, this very absence of gene product over-expression still provides significant information for cancer diagnosis and treatment. Thus, if over-expression of the gene product does not parallel gene amplification in certain tumor types but does so in others, then parallel monitoring of gene amplification and gene product over-expression enables more accurate tumor classification and hence better determination of suitable therapy. In addition, absence of over-expression is crucial information for the practicing clinician. If a gene is amplified but the corresponding gene product is not over-expressed, the clinician accordingly will decide not to treat a patient with agents that target that gene product.

7. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information or belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so

made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful statements may jeopardize the validity of the application or any patent issued thereon.

By: Avi Ashkenazi
Avi Ashkenazi, Ph.D.

Date: 9/15/03

CURRICULUM VITAE

Avi Ashkenazi

July 2003

Personal:

Date of birth: 29 November, 1956
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Education:

1983: B.S. in Biochemistry, with honors, Hebrew University, Israel
1986: Ph.D. in Biochemistry, Hebrew University, Israel

Employment:

1983-1986: Teaching assistant, undergraduate level course in Biochemistry
1985-1986: Teaching assistant, graduate level course on Signal Transduction
1986 - 1988: Postdoctoral fellow, Hormone Research Dept., UCSF, and
Developmental Biology Dept., Genentech, Inc., with J. Ramachandran
1988 - 1989: Postdoctoral fellow, Molecular Biology Dept., Genentech, Inc.,
with D. Capon
1989 - 1993: Scientist, Molecular Biology Dept., Genentech, Inc.
1994 -1996: Senior Scientist, Molecular Oncology Dept., Genentech, Inc.
1996-1997: Senior Scientist and Interim director, Molecular Oncology Dept.,
Genentech, Inc.
1997-1990: Senior Scientist and preclinical project team leader, Genentech, Inc.
1999 -2002: Staff Scientist in Molecular Oncology, Genentech, Inc.
2002-present: Staff Scientist and Director in Molecular Oncology, Genentech, Inc.

Awards:

1988: First prize, The Boehringer Ingelheim Award

Editorial:

Editorial Board Member: Current Biology

Associate Editor, Clinical Cancer Research.

Associate Editor, Cancer Biology and Therapy.

Refereed papers:

1. Gertler, A., Ashkenazi, A., and Madar, Z. Binding sites for human growth hormone and ovine and bovine prolactins in the mammary gland and liver of the lactating cow. *Mol. Cell. Endocrinol.* **34**, 51-57 (1984).
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Review articles:

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16. Almasan, A. and Ashkenazi, A. Apo2L/TRAIL: apoptosis signaling, biology, and potential for cancer therapy. *Cytokine and Growth Factor Reviews* **14**, 337-348 (2003).

Book:

Antibody Fusion Proteins (Chamow, S., and Ashkenazi, A., eds., John Wiley and Sons Inc.) (1999).

Talks:

1. Resistance of primary HIV isolates to CD4 is independent of CD4-gp120 binding affinity. UCSD Symposium, HIV Disease: Pathogenesis and Therapy. Greenelefe, FL, March 1991.
2. Use of immuno-hybrids to extend the half-life of receptors. IBC conference on Biopharmaceutical Half-life Extension. New Orleans, LA, June 1992.
3. Results with TNF receptor Immunoadhesins for the Treatment of Sepsis. IBC conference on Endotoxemia and Sepsis. Philadelphia, PA, June 1992.
4. Immunoadhesins: an alternative to human antibodies. IBC conference on Antibody Engineering. San Diego, CA, December 1993.
5. Tumor necrosis factor receptor: a potential therapeutic for human septic shock. American Society for Microbiology Meeting, Atlanta, GA, May 1993.
6. Protective efficacy of TNF receptor immunoadhesin vs anti-TNF monoclonal antibody in a rat model for endotoxic shock. 5th International Congress on TNF. Asilomar, CA, May 1994.
7. Interferon- γ signals via a multisubunit receptor complex that contains two types of polypeptide chain. American Association of Immunologists Conference. San Francisco, CA, July 1995.
8. Immunoadhesins: Principles and Applications. Gordon Research Conference on Drug Delivery in Biology and Medicine. Ventura, CA, February 1996.

9. Apo-2 Ligand, a new member of the TNF family that induces apoptosis in tumor cells. Cambridge Symposium on TNF and Related Cytokines in Treatment of Cancer. Hilton-Head, NC, March 1996.
10. Induction of apoptosis by Apo2 Ligand. American Society for Biochemistry and Molecular Biology, Symposium on Growth Factors and Cytokine Receptors. New Orleans, LA, June, 1996.
11. Apo2 ligand, an extracellular trigger of apoptosis. 2nd Clontech Symposium, Palo Alto, CA, October 1996.
12. Regulation of apoptosis by members of the TNF ligand and receptor families. Stanford University School of Medicine, Palo Alto, CA, December 1996.
13. Apo-3: a novel receptor that regulates cell death and inflammation. 4th International Congress on Immune Consequences of Trauma, Shock, and Sepsis. Munich, Germany, March 1997.
14. New members of the TNF ligand and receptor families that regulate apoptosis, inflammation, and immunity. UCLA School of Medicine, LA, CA, March 1997.
15. Immunoadhesins: an alternative to monoclonal antibodies. 5th World Conference on Bispecific Antibodies. Volendam, Holland, June 1997.
16. Control of Apo2L signaling. Cold Spring Harbor Laboratory Symposium on Programmed Cell Death. Cold Spring Harbor, New York. September, 1997.
17. Chairman and speaker, Apoptosis Signaling session. IBC's 4th Annual Conference on Apoptosis. San Diego, CA., October 1997.
18. Control of Apo2L signaling by death and decoy receptors. American Association for the Advancement of Science. Philadelphia, PA, February 1998.
19. Apo2 ligand and its receptors. American Society of Immunologists. San Francisco, CA, April 1998.
20. Death receptors and ligands. 7th International TNF Congress. Cape Cod, MA, May 1998.
21. Apo2L as a potential therapeutic for cancer. UCLA School of Medicine. LA, CA, June 1998.
22. Apo2L as a potential therapeutic for cancer. Gordon Research Conference on Cancer Chemotherapy. New London, NH, July 1998.
23. Control of apoptosis by Apo2L. Endocrine Society Conference, Stevenson, WA, August 1998.
24. Control of apoptosis by Apo2L. International Cytokine Society Conference, Jerusalem, Israel, October 1998.

25. Apoptosis control by death and decoy receptors. American Association for Cancer Research Conference, Whistler, BC, Canada, March 1999.
26. Apoptosis control by death and decoy receptors. American Society for Biochemistry and Molecular Biology Conference, San Francisco, CA, May 1999.
27. Apoptosis control by death and decoy receptors. Gordon Research Conference on Apoptosis, New London, NH, June 1999.
28. Apoptosis control by death and decoy receptors. Arthritis Foundation Research Conference, Alexandria GA, Aug 1999.
29. Safety and anti-tumor activity of recombinant soluble Apo2L/TRAIL. Cold Spring Harbor Laboratory Symposium on Programmed Cell Death. . Cold Spring Harbor, NY, September 1999.
30. The Apo2L/TRAIL system: therapeutic potential. American Association for Cancer Research, Lake Tahoe, NV, Feb 2000.
31. Apoptosis and cancer therapy. Stanford University School of Medicine, Stanford, CA, Mar 2000.
32. Apoptosis and cancer therapy. University of Pennsylvania School of Medicine, Philadelphia, PA, Apr 2000.
33. Apoptosis signaling by Apo2L/TRAIL. International Congress on TNF. Trondheim, Norway, May 2000.
34. The Apo2L/TRAIL system: therapeutic potential. Cap-CURE summit meeting. Santa Monica, CA, June 2000.
35. The Apo2L/TRAIL system: therapeutic potential. MD Anderson Cancer Center. Houston, TX, June 2000.
36. Apoptosis signaling by Apo2L/TRAIL. The Protein Society, 14th Symposium. San Diego, CA, August 2000.
37. Anti-tumor activity of Apo2L/TRAIL. AAPS annual meeting. Indianapolis, IN Aug 2000.
38. Apoptosis signaling and anti-cancer potential of Apo2L/TRAIL. Cancer Research Institute, UC San Francisco, CA, September 2000.
39. Apoptosis signaling by Apo2L/TRAIL. Kenote address, TNF family Minisymposium, NIH. Bethesda, MD, September 2000.
40. Death receptors: signaling and modulation. Keystone symposium on the Molecular basis of cancer. Taos, NM, Jan 2001.
41. Preclinical studies of Apo2L/TRAIL in cancer. Symposium on Targeted therapies in the treatment of lung cancer. Aspen, CO, Jan 2001.

42. Apoptosis signaling by Apo2L/TRAIL. Weizmann Institute of Science, Rehovot, Israel, March 2001.
43. Apo2L/TRAIL: Apoptosis signaling and potential for cancer therapy. Weizmann Institute of Science, Rehovot, Israel, March 2001.
44. Targeting death receptors in cancer with Apo2L/TRAIL. Cell Death and Disease conference, North Falmouth, MA, Jun 2001.
45. Targeting death receptors in cancer with Apo2L/TRAIL. Biotechnology Organization conference, San Diego, CA, Jun 2001.
46. Apo2L/TRAIL signaling and apoptosis resistance mechanisms. Gordon Research Conference on Apoptosis, Oxford, UK, July 2001.
47. Apo2L/TRAIL signaling and apoptosis resistance mechanisms. Cleveland Clinic Foundation, Cleveland, OH, Oct 2001.
48. Apoptosis signaling by death receptors: overview. International Society for Interferon and Cytokine Research conference, Cleveland, OH, Oct 2001.
49. Apoptosis signaling by death receptors. American Society of Nephrology Conference. San Francisco, CA, Oct 2001.
50. Targeting death receptors in cancer. Apoptosis: commercial opportunities. San Diego, CA, Apr 2002.
51. Apo2L/TRAIL signaling and apoptosis resistance mechanisms. Kimmel Cancer Research Center, Johns Hopkins University, Baltimore MD. May 2002.
52. Apoptosis control by Apo2L/TRAIL. (Keynote Address) University of Alabama Cancer Center Retreat, Birmingham, Ab. October 2002.
53. Apoptosis signaling by Apo2L/TRAIL. (Session co-chair) TNF international conference. San Diego, CA. October 2002.
54. Apoptosis signaling by Apo2L/TRAIL. Swiss Institute for Cancer Research (ISREC). Lausanne, Swizerland. Jan 2003.
55. Apoptosis induction with Apo2L/TRAIL. Conference on New Targets and Innovative Strategies in Cancer Treatment. Monte Carlo. February 2003.
56. Apoptosis signaling by Apo2L/TRAIL. Hermelin Brain Tumor Center Symposium on Apoptosis. Detroit, MI. April 2003.
57. Targeting apoptosis through death receptors. Sixth Annual Conference on Targeted Therapies in the Treatment of Breast Cancer. Kona, Hawaii. July 2003.
58. Targeting apoptosis through death receptors. Second International Conference on Targeted Cancer Therapy. Washington, DC. Aug 2003.

Issued Patents:

1. Ashkenazi, A., Chamow, S. and Kogan, T. Carbohydrate-directed crosslinking reagents. US patent 5,329,028 (Jul 12, 1994).
2. Ashkenazi, A., Chamow, S. and Kogan, T. Carbohydrate-directed crosslinking reagents. US patent 5,605,791 (Feb 25, 1997).
3. Ashkenazi, A., Chamow, S. and Kogan, T. Carbohydrate-directed crosslinking reagents. US patent 5,889,155 (Jul 27, 1999).
4. Ashkenazi, A., APO-2 Ligand. US patent 6,030,945 (Feb 29, 2000).
5. Ashkenazi, A., Chuntharapai, A., Kim, J., APO-2 ligand antibodies. US patent 6,046,048 (Apr 4, 2000).
6. Ashkenazi, A., Chamow, S. and Kogan, T. Carbohydrate-directed crosslinking reagents. US patent 6,124,435 (Sep 26, 2000).
7. Ashkenazi, A., Chuntharapai, A., Kim, J., Method for making monoclonal and cross-reactive antibodies. US patent 6,252,050 (Jun 26, 2001).
8. Ashkenazi, A. APO-2 Receptor. US patent 6,342,369 (Jan 29, 2002).
9. Ashkenazi, A. Fong, S., Goddard, A., Gurney, A., Napier, M., Tumas, D., Wood, W. A-33 polypeptides. US patent 6,410,708 (Jun 25, 2002).
10. Ashkenazi, A. APO-3 Receptor. US patent 6,462,176 B1 (Oct 8, 2002).
11. Ashkenazi, A. APO-2LI and APO-3 polypeptide antibodies. US patent 6,469,144 B1 (Oct 22, 2002).
12. Ashkenazi, A., Chamow, S. and Kogan, T. Carbohydrate-directed crosslinking reagents. US patent 6,582,928B1 (Jun 24, 2003).

DECLARATION OF PAUL POLAKIS, Ph.D.

I, Paul Polakis, Ph.D., declare and say as follows:

1. I was awarded a Ph.D. by the Department of Biochemistry of the Michigan State University in 1984. My scientific Curriculum Vitae is attached to and forms part of this Declaration (Exhibit A).
2. I am currently employed by Genentech, Inc. where my job title is Staff Scientist. Since joining Genentech in 1999, one of my primary responsibilities has been leading Genentech's Tumor Antigen Project, which is a large research project with a primary focus on identifying tumor cell markers that find use as targets for both the diagnosis and treatment of cancer in humans.
3. As part of the Tumor Antigen Project, my laboratory has been analyzing differential expression of various genes in tumor cells relative to normal cells. The purpose of this research is to identify proteins that are abundantly expressed on certain tumor cells and that are either (i) not expressed, or (ii) expressed at lower levels, on corresponding normal cells. We call such differentially expressed proteins "tumor antigen proteins". When such a tumor antigen protein is identified, one can produce an antibody that recognizes and binds to that protein. Such an antibody finds use in the diagnosis of human cancer and may ultimately serve as an effective therapeutic in the treatment of human cancer.
4. In the course of the research conducted by Genentech's Tumor Antigen Project, we have employed a variety of scientific techniques for detecting and studying differential gene expression in human tumor cells relative to normal cells, at genomic DNA, mRNA and protein levels. An important example of one such technique is the well known and widely used technique of microarray analysis which has proven to be extremely useful for the identification of mRNA molecules that are differentially expressed in one tissue or cell type relative to another. In the course of our research using microarray analysis, we have identified approximately 200 gene transcripts that are present in human tumor cells at significantly higher levels than in corresponding normal human cells. To date, we have generated antibodies that bind to about 30 of the tumor antigen proteins expressed from these differentially expressed gene transcripts and have used these antibodies to quantitatively determine the level of production of these tumor antigen proteins in both human cancer cells and corresponding normal cells. We have then compared the levels of mRNA and protein in both the tumor and normal cells analyzed.
5. From the mRNA and protein expression analyses described in paragraph 4 above, we have observed that there is a strong correlation between changes in the level of mRNA present in any particular cell type and the level of protein

expressed from that mRNA in that cell type. In approximately 80% of our observations we have found that increases in the level of a particular mRNA correlates with changes in the level of protein expressed from that mRNA when human tumor cells are compared with their corresponding normal cells.

6. Based upon my own experience accumulated in more than 20 years of research, including the data discussed in paragraphs 4 and 5 above and my knowledge of the relevant scientific literature, it is my considered scientific opinion that for human genes, an increased level of mRNA in a tumor cell relative to a normal cell typically correlates to a similar increase in abundance of the encoded protein in the tumor cell relative to the normal cell. In fact, it remains a central dogma in molecular biology that increased mRNA levels are predictive of corresponding increased levels of the encoded protein. While there have been published reports of genes for which such a correlation does not exist, it is my opinion that such reports are exceptions to the commonly understood general rule that increased mRNA levels are predictive of corresponding increased levels of the encoded protein.

7. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information or belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful statements may jeopardize the validity of the application or any patent issued thereon.

Dated: 5/07/04

By: Paul Polakis

Paul Polakis, Ph.D.

CURRICULUM VITAE

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EDUCATION:

Ph.D., Biochemistry, Department of Biochemistry,
Michigan State University (1984)

B.S., Biology. College of Natural Science, Michigan State University (1977)

PROFESSIONAL EXPERIENCE:

2002-present	Staff Scientist, Genentech, Inc S. San Francisco, CA
1999- 2002	Senior Scientist, Genentech, Inc., S. San Francisco, CA
1997 -1999	Research Director Onyx Pharmaceuticals, Richmond, CA
1992- 1996	Senior Scientist, Project Leader, Onyx Pharmaceuticals, Richmond, CA
1991-1992	Senior Scientist, Chiron Corporation, Emeryville, CA.
1989-1991	Scientist, Cetus Corporation, Emeryville CA.
1987-1989	Postdoctoral Research Associate, Genentech, Inc., South San Francisco, CA.
1985-1987	Postdoctoral Research Associate, Department of Medicine, Duke University Medical Center, Durham, NC

1984-1985

Assistant Professor, Department of Chemistry,
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1980-1984

Graduate Research Assistant, Department of
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PUBLICATIONS:

1. Polakis, P. G. and Wilson, J. E. 1982 Purification of a Highly Bindable Rat Brain Hexokinase by High Performance Liquid Chromatography. **Biochem. Biophys. Res. Commun.** 107, 937-943.
2. Polakis, P.G. and Wilson, J. E. 1984 Proteolytic Dissection of Rat Brain Hexokinase: Determination of the Cleavage Pattern during Limited Digestion with Trypsin. **Arch. Biochem. Biophys.** 234, 341-352.
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